

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SIMON J. BURCHETT PHOTOGRAPHY, INC.,

Plaintiff,

v.

A.P. MOLLER MAERSK A/S,

Defendant.
-----X

Index No.: 1:2019-cv-01576 (KPF)

**DECLARATION OF RICHARD
GARBARINI**

I, Richard Garbarini, hereby declare pursuant to 28 U.S.C. § 1746, and under the penalties of perjury, as follows.

1. I am counsel to plaintiff in this matter and am fully familiar with all facts.
2. Plaintiff requested on numerous occasions to arbitrate the within dispute. Defendant, at all times, refused to arbitrate. Attached as Exhibit 1 is a true and correct copy of one the emails from the counsel for defendant refusing to arbitration.
3. I declare under the penalty of perjury that the forgoing is true and correct.

EXECUTED ON

March 7, 2020


Richard Garbarini

Exhibit 1

[Print](#) | [Close Window](#)**Subject:** RE: Demand for Arbitration**From:** "Marston Jr., David W." <david.marston@morganlewis.com>**Date:** Wed, Jan 30, 2019 3:29 pm**To:** Richard Garbarini <rgarbarini@garbarinilaw.com>

Understood. I get a lot of emails myself. Please communicate directly with me going forward.

I reviewed the emails between you and Ms. Barstow. Contrary to your statement below, Ms. Barstow did not request to "arbitrate all issues." Rather, she informed you that arbitration was required for the claim alleged in your email of January 21, 2019 at 2:22 p.m. (the alleged failure to use "best effort to remove all the images in the settlement agreement"). In her email, Ms. Barstow also informed you that A.P. Moller Maersk A/S ("APMM") complied with its obligation in Section 3 of the Settlement and Release Agreement dated December 18, 2018 to "make its best efforts to remove the Images from both its Flickr page and related Flickr Group pages." Therefore, your claim that APMM failed to use "best effort to remove all the images" is without merit.

I have also reviewed the Complaint that you filed in federal court and your draft Demand for Arbitration. All of the claims against APMM set forth in these documents are covered by the Settlement and Release Agreement dated December 18, 2018. Therefore, we demand that you immediately withdraw the Complaint that you filed in federal court. APMM does not agree to waive service of process in federal court and APMM does not agree to submit "a joint request for arbitration" with respect to these frivolous claims. If you continue to pursue such claims in any forum, APMM will seek appropriate relief, including without limitation, recovery of its attorneys' fees and costs and appropriate sanctions against you and your client.

Regards,

David W. Marston Jr.

Morgan, Lewis & Bockius LLP

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1701 Market Street | Philadelphia, PA 19103

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david.marston@morganlewis.com | www.morganlewis.com

From: Richard Garbarini <rgarbarini@garbarinilaw.com>

Sent: Wednesday, January 30, 2019 12:16 AM

To: Marston Jr., David W. <david.marston@morganlewis.com>

Subject: Re: Demand for Arbitration

[EXTERNAL EMAIL]

Mr. Marston:

I do apologize. There are 120 emails from today I haven't had time to work through until now.

The demand for arbitration sent earlier is based on the prior settlement agreement requiring arbitration at JAMS NYC. Ms. Barstow requested we arbitrate all issues, so I assume notice is unnecessary. Instead, we can put in a joint request for arbitration.

Let me know your client's position.

Richard Garbarini

Garbarini FitzGerald P.C.

On Jan 29, 2019, at 7:53 PM, Marston Jr., David W. <david.marston@morganlewis.com> wrote:

Mr. Garbarini –

As I informed you in my email at 2:17 p.m. today, I have been retained to represent A.P. Moller Maersk A/S in connection with this matter. Ms. Rachelle Barstow is no longer serving as counsel to A.P. Moller Maersk A/S in connection with this matter, rather, she is my client. Therefore, as stated in my earlier email, all communications must be directed to me.

Regards,

David W. Marston Jr.

Morgan, Lewis & Bockius LLP

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From: Richard Garbarini <rgarbarini@garbarinilaw.com>

Date: January 29, 2019 at 5:51:33 PM EST

To: Rachelle Barstow <Rachelle.Barstow@maersk.com>

Subject: Demand for Arbitration

Rachelle:

Assuming Maersk is amenable to arbitrating all claims, I have enclosed a demand for arbitration form. If you could just fill in the Maersk information at the top, we can submit this as a joint demand. Under the JAMS rules (which are incorporated into the agreement) the parties will split all costs. So I will need a check for \$750 from Maersk for its share of the filing fee.

Richard Garbarini

GARBARINI FITZGERALD P.C.

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certa bonum certamen

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